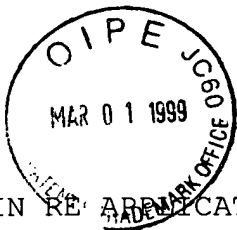


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PATENT



IN THE U.S. PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:

BEFORE THE BOARD OF APPEALS

Masayuki Maruta et al.

APPEAL NO.:

SERIAL NO.: 08/815,592

GROUP: 1714

FILED: March 12, 1997

EXAMINER: T. Yoon

FOR: Powder Coating

Date: March 1, 1999 (Monday)

Docket No.: 1422-297P

APPEAL BRIEF TRANSMITTAL FORM

Assistant Commissioner for Patents
Washington, D.C. 20231:

Sir:

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MAR 08 1999

GROUP 1700

Transmitted herewith is an Appeal Brief (in triplicate) on behalf of the appellants in connection with the above-identified application.

— The enclosed document is being transmitted via the Certificate of Mailing provisions of 37 C.F.R. 1.8.

A Notice of Appeal was filed on December 29, 1998.

— A Verified Statement Claiming Small Entity Status

— is submitted herewith (— Original — Photocopy).

— was previously submitted on _____.

The fee has been calculated as shown below:

— \$ _____ for an extension of _____ month(s) pursuant to 37 CFR §§ 1.17 and 1.136(a).

X Fee of \$ 300.00 for filing an Appeal Brief.

Application No.: 08/815,592

X A check in the amount of \$ 300.00 is attached.


— Please charge Deposit Account No. 02-2448 in the amount of \$ _____. A triplicate copy of this sheet is attached.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By

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PATENT
1422-297P

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:

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PATENT
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: BEFORE THE BOARD OF APPEALS
Masayuki Maruta et al. APPEAL NO.:
SERIAL NO.: 08/815,592 GROUP: 1714
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FOR: Powder Coating

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GROUP 1700

BRIEF ON BEHALF OF APPELLANT

Honorable Commissioner of Patents
and Trademarks
Washington, D.C. 20231

March 1, 1999

Sir:

This is an Appeal from the Final Rejection of claims 2-7 and 22-36 in the above-identified application, which claims were finally rejected in the Office Action dated July 29, 1998.

(1) REAL PARTY IN INTEREST

The real party in interest of the present invention is Kao Corporation of Tokyo, Japan, the assignee of the entire right and interest of the instant application. The Assignment of said right and interest was recorded on March 12, 1997 at Reel 8451, Frames 790-795.

(2) RELATED APPEALS AND INTERFERENCES

There are no related applications on appeal or in interference proceedings.

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(3) STATUS OF THE CLAIMS

Claims 2-7, 9-35 and 37 are pending in the present application. Method claims 9-21 are withdrawn from consideration.

Claims 1-21 were originally filed with the present application on March 12, 1997. Claims 1 and 8 were cancelled and claims 22-36 were added in the Amendment dated January 12, 1998. Claim 36 was cancelled and claim 37 was added in the Amendment dated November 30, 1998. Claims 2-7, 22-35 and 37 are appealed.

(4) STATUS OF THE AMENDMENTS

Subsequent to the Examiner's final rejection of claims 2-7 and 22-36 on July 29, 1998, an Amendment after Final Rejection was filed on November 30, 1998 canceling claim 36 and adding claim 37. Upon filing the Notice of Appeal, the amendment was entered. No additional have been filed since that time.

(5) SUMMARY OF THE INVENTION

The present invention relates to a combination of two or more powder coatings usable in a powder coating method for forming a coating film having a visually homogeneous hue. The coating film resulting from applying the combination of the powder coatings of the present invention results in a single layer having a homogeneous hue. The single layer having a homogeneous hue is achieved by the present invention by controlling the difference in

the triboelectric charge of each powder within a given range (present specification at page 4, lines 3-6). In particular, the present invention relates to a combination of two or more powder coatings for forming a coating film having a visually homogeneous hue, wherein the color of each powder coating is different, a difference in triboelectric charge of said two or more powder coatings is 5.0 $\mu\text{C/g}$ or less, and the particles of each powder coating are not agglomerated (present specification at page 4, lines 11-16 and page 11, line 25). Still in another embodiment, the average particle size of each powder coating is preferably from 1 to 50 μm , more preferably greater than 10 μm (present specification at page 11, lines 16-21).

In another embodiment of the present invention, the difference in true specific gravities between each of said two or more powder coatings is 0.15 g/cc or less (present specification at page 17, line 24 to page 18, line 1). In another embodiment, the difference in apparent densities between each of said two or more powder coatings is preferably 0.020 g/cc or less (present specification at page 19, lines 18-20). Also, in another embodiment, the difference in the softening points between each of said two or more powder coatings is 5.0 $^{\circ}\text{C}$ or less, the softening points being measured using a capillary rheometer (present specification at page 20, lines 20-24). In yet another embodiment, the difference in the dielectric constant of each of said two or more powder coatings is 0.20 or less (present

specification at page 15, lines 11-12). In another embodiment, the difference in the electric resistance of each of said two or more powder coatings is from 0.1 to 10 (page 16, lines 16-17).

According to another embodiment of the present invention, it is preferable that at least one powder coating among the two or more powder coatings is a white powder coating containing a white pigment, and the remaining powder coatings comprise no white pigments (present specification at page 21, lines 19-22).

(6) ISSUES

Issue 1

Whether claims 2-7 and 22-36 are unpatentable under 35 U.S.C. § 102(b) as anticipated by Millar et al., United States Patent No. 3,860,557.

Issue 2

Whether claims 2-7 and 22-36 are unpatentable under 35 U.S.C. § 103(a) as obvious over Millar et al., United States Patent No. 3,860,557.

(7) GROUPING OF THE CLAIMS

Appellants respectfully submit that the claims currently rejected as indicated above do not stand or fall together as set forth below. Specifically, the claims of the present invention fall within the groups as defined in the following table:

GROUPS	CLAIMS
I	22, 25 and 26
II	37
III	2 and 27
IV	3 and 28
V	4 and 29
VI	5 and 30
VII	6 and 31
VIII	23 and 34
IXX	24 and 35
X	7 and 33
XI	32

The Honorable Board of Patent Appeals and Interferences is requested to consider each of these groups of claims on its own merits for reasons which will be more particularly set forth in Appellants' section titled "ARGUMENTS".

(8) ARGUMENTS

(A) ISSUE 1

GROUP I - CLAIMS 22, 25 AND 26

Appellants respectfully submit that independent claim 22, claim 25 which depends therefrom and independent claim 26 are patentable over the prior art as cited above under Issue 1 for the

following reasons:

The reference utilized by the Examiner with respect to Issue 1 is Millar et al., United States Patent No. 3,860,557 (hereinafter referred to as Millar '557). Millar '557 relates to an electrostatic method of applying a **multi-layered** coating and products produced thereby. The multi-layered coating of Millar '557 is formed by applying to a substrate a composition containing two or more powders, provided that the powders of non-conductive materials have dielectric constants that differ from each other by a factor of at least 0.1. After the composition of Millar '557 is applied to the substrate, stratified layers of different powders form due to the different dielectric constants (Millar '557 at column 3, lines 1-11 and 42-45).

However, Millar '557 fails to teach a **single layered** coating according to the present invention as required in order to anticipate the present invention. In particular, Millar '557 fails to teach a single layer containing two or more powder coatings, wherein the difference in the triboelectric charge of said two or more powder coatings is 5.0 $\mu\text{C/g}$ or less. Furthermore, Millar '557 fails to teach a single layered coating containing two or more powder coatings wherein the color of each powder coating is different as claimed. Millar '557 also fails to teach a coating film having a homogeneous hue as claimed. Appellants submit that it is not at all surprising that Millar '557 fails to teach the above noted aspects of the present

invention because Millar '557 is interested in obtaining stratified layers containing different powders, not a single layered coating of a homogeneous hue containing two or more powder coatings according to the present invention.

During prosecution of the present application, the Examiner asserted that Millar '557 discloses a powder coating composition containing at least two different powders having quite similar dielectric constants and quite similar specific gravities. Specifically, the Examiner referred to column 4, lines 11-15 of Millar '557. However, Appellants submit that when this citation is taken in its full context, the Examiner's assertion is not correct. The relevant portion of Millar '557 at column 4, lines 8-15 reads as follows:

Normally, the coating compositions of the present invention will utilize 2 or 3 different components, to produce a resulting 2 or 3 layer coating on the substrate. It will, of course, be realized that one component or one final layer in the coating may be itself a mixture of two or more specific materials - e.g., two or more thermoplastic polymers having quite similar dielectric constants and quite similar specific gravities. When 3, 4, 5 or even more distinct coating components are utilized to produce 3, 4, 5 or even more layers in the final coating, each of the components should differ from the other components by the differentials set forth above as to dielectric constant, or chargeability, and specific gravity.

The Examiner asserts that this citation teaches a powder coating composition containing at least two different powders having quite similar dielectric constants and quite similar specific gravities. However, Appellants submit that the Examiner has read this citation out of context. Specifically, throughout

the entire reference, Millar '557 refers to separate powders as "components." For example, in the above citation, Millar '557 refers to "distinct coating components" when referring to powders in separate layers. Thus, Millar '557 is utilizing the word "component" interchangeably with "powder." However, in the phrase which the Examiner asserts that Millar '557 is referring to different powders, Millar '557 uses the words "materials" (e.g., two or more thermoplastic polymers) and not "components." This is the first evidence that the Examiner has incorrectly interpreted the citation of Millar '557. Specifically, Appellants submit that had Millar '557 wished to teach a single layer containing different powders, Millar '557 would have disclosed that the single layer was a mixture of at least two different components. However, this was not the case.

Appellants respectfully submit that the proper interpretation of the above passage is that Millar '557 is teaching that a single powder (or "component") can itself be composed of two or more materials. For example, a single powder would consist of two or more thermoplastic polymers having similar dielectric constants and specific gravities. By contrast, the feature of the present invention is in that two or more powder coatings are utilized in the same layer, and that the two or more powder coatings have similar properties such as triboelectric charges, dielectric constants and specific gravities.

Since triboelectric charges of a powder coating vary

depending on pigments contained therein, even if the thermoplastic polymers are the same, triboelectric charges of a powder coating as a whole, not those of the polymers, are important in the present invention.

No doctrine of U.S. patent law is more clear than that a prior patent or other publication, in order to anticipate, must bear within its four corners adequate directions for the practice of the patent. If the earlier disclosure offers no more than a starting point for further experiments, if its teaching will sometimes succeed and sometimes fail, and if it does not inform the art without more how to practice the new invention, it has not correspondingly enriched the store of common knowledge, and it is not an anticipation. Dewey v. Mimex Co., Inc., 52 U.S.P.Q. 138 (2d Cir. 1942).

In the present case, Appellants submit that even if the Examiner's interpretation of Millar '557 is hypothetically correct, Millar '557 fails to provide any other indication of how to practice the present invention. Additionally, Millar '557 ignores other limitations of the present invention. Specifically, the colors of the two or more powder coatings of the present invention are different and the coating film which is formed has a homogeneous hue. Millar '557 provides no disclosure or suggestion of these limitations. In fact, Millar '557 fails to provide even a single Example where a single layer contains two or more powders, much less an Example containing two or more powders,

wherein the color of each powder is different. The entirety of the disclosure and examples of Millar '557 are directed to multi-layered coatings containing only one powder for each layer. Thus, Millar '557 fails as an anticipation reference.

In summary, when a person of ordinary skill in the art reads Millar '557 that person is presented with a multi-layered structure, wherein each layer is formed by one different powder that differs from each other in dielectric constants by a factor of at least 0.1. There is no teaching in either the detailed discussion of Millar '557 or the Examples of Millar '557 of an embodiment even remotely similar to the present invention. Accordingly, Appellants submit that significant and fundamental distinctions exist between the present invention and Millar '557, and thus, Millar '557 fails to anticipate the present invention.

GROUP II - CLAIM 37

Appellants respectfully submit that independent claim 37 is patentable over the prior art as cited above under Issue 1 for the following reasons:

In a manner similar to claims 22 and 26, claim 37 recites a powder coating containing two or more powder coatings, which when applied to a substrate forms a single layer. Like claims 22 and 26, claim 37 requires that each of these powder coatings are of different colors, have a difference in triboelectric charge of 5.0 $\mu\text{C/g}$ or less, the particles of the powders are not agglomerated

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and that the powder coatings form a coating film having a visually homogeneous hue. As established above, Millar '557 fails to teach any of these limitations.

However, claim 37 differs from claims 22 and 26 in that claim 37 additionally requires that each of said two or more powder coatings contain a resin and at least one colorant. These are additional limitations which are also not taught by Millar '557. Accordingly, claim 37 is not anticipated by Millar '557 for the same reasons as discussed above with respect to claims 22 and 26 and for the reasons recited herein.

GROUP III - CLAIMS 2 AND 27

Claims 2 and 27, which are dependent upon claims 22 and 26, respectively, additionally require that the difference in true specific gravity of each of the two or more powder coatings is 0.15 g/cc or less. In addition to failing to teach the limitations of independent claims 22 and 26, Millar '557 additionally fails to teach the limitations of claims 2 and 27. Also, as indicated above, Millar '557 fails to teach a single layered powder coating containing two or more powder coatings, thus, Millar '557 cannot even inherently practice the subject matter encompassed by claims 2 and 27. Accordingly, claims 2 and 27 are not anticipated by Millar '557.

GROUP IV - CLAIMS 3 and 28

Claims 3 and 28, which are dependent upon claims 22 and 26, respectively, additionally require that the difference in apparent densities of each of the two or more powder coatings is 0.020 g/cc or less. Appellants submit that in addition to failing to teach the limitations of independent claims 22 and 26, Millar '557 also fails to teach the limitations of claims 3 and 28. Also, as indicated above, Millar '557 fails to teach a single layered coating containing two or more coatings, thus, Millar '557 cannot even inherently practice the subject matter encompassed by claims 3 and 28. Accordingly, claims 3 and 28 are not anticipated by Millar '557.

GROUP V - CLAIMS 4 AND 29

Claims 4 and 29, which are dependent upon claims 22 and 26, respectively, additionally require that the difference in softening points of said two or more powder coatings is 5.0 °C or less. Appellants submit that in addition to failing to teach the limitations of independent claims 22 and 26, Millar '557 also fails to teach the limitations of claims 4 and 29. Also, as indicated above, Millar '557 fails to teach a single layered coating containing two or more powder coatings, thus, Millar '557 cannot even inherently practice the subject matter encompassed by claims 4 and 29. Accordingly, claims 4 and 29 are not anticipated by Millar '557.

GROUP VI - CLAIMS 5 AND 30

Claims 5 and 30, which are dependent upon claims 22 and 26, respectively, additionally require that the difference between the dielectric constants of said two or more powder coatings is 0.20 or less. Appellants submit that in addition to failing to teach the limitations of independent claims 22 and 26, Millar '557 also fails to teach the limitations of claims 5 and 30. Also, as indicated above, Millar '557 fails to teach a single layered coating containing two or more powder coatings, thus, Millar '557 cannot even inherently practice the subject matter encompassed by claims 5 and 30. Accordingly, claims 5 and 30 are not anticipated by Millar '557.

GROUP VII - CLAIMS 6 AND 31

Claims 6 and 31, which are dependent upon claims 22 and 26, respectively, additionally require that each of the ratios of electric resistance of each of said two or more color powder coatings is from 0.1 to 10. Appellants submit that in addition to failing to teach the limitations of independent claims 22 and 26, Millar '557 also fails to teach the limitations of claims 6 and 31. Also, as indicated above, Millar '557 fails to teach a single layered coating containing two or more powder coatings, thus, Millar '557 cannot even inherently practice the subject matter encompassed by claims 6 and 31. Accordingly, claims 6 and 31 are

not anticipated by Millar '557.

GROUP VIII - CLAIMS 23 AND 34

Claims 23 and 34, which are dependent upon claims 22 and 26, respectively, additionally require that the average particle size of the powder coatings is 1 to 50 μ m. Millar '557 fails to disclose this limitation. Granted, Millar '557 teaches average particle sizes of powders, however, the powders according to Millar '557 are contained in separate layers and not within the same layer as in the present invention. Accordingly, Millar '557 fails to anticipate the subject matter encompassed by claims 23 and 34.

GROUP IX - CLAIMS 24 AND 35

Claims 24 and 35, which are dependent upon claims 22 and 26, respectively, additionally require that the average particle size of the powder coatings exceeds 10 μ m. Millar '557 fails to teach this limitation. Granted, Millar '557 teaches average particle sizes of powders, however, the powders according to Millar '557 are contained in separate layers and not within the same layer as in the present invention. Accordingly, Millar '557 fails to anticipate the subject matter encompassed by claims 24 and 35.

GROUP X - CLAIMS 7 and 33

Claims 7 and 33, which are dependent upon claims 22 and 23,

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respectively, additionally require that at least one powder coating is a white powder coating containing a white pigment, and the remaining powder coatings do not contain a white pigment. Millar '557 fails to teach this limitation.. Accordingly, Millar '557 fails to anticipate the subject matter encompassed by claims 7 and 33.

GROUP XI - CLAIM 32

Claim 32, which depends upon claims 26-31, additionally requires that a powder coating composition which comprises two or more powder coating compositions selected from any one of claims 26-31. This is a limitation not taught by Millar '557. However, it is not surprising that Millar '557 fails to teach this limitation because Millar '557 fails to individually teach the limitations of claims 26-31. Therefore, if Millar '557 fails to individually teach theses limitation, Millar '557 cannot teach combinations of these limitations. Accordingly, Millar '557 fails to anticipate the subject matter encompassed by claim 32.

(B) ISSUE 2

GROUP I - CLAIMS 22, 25 AND 26

Appellants respectfully submit that independent claim 22, claim 25 which depends therefrom and independent claim 26 are patentable over the prior art as cited above under Issue 2 for the

following reasons:

The Examiner also utilizes Millar '557 with respect to Issue 2. As explained above, Millar '557 relates to an electrostatic method of applying a multi-layered coating and products produced thereby. The multi-layered coating of Millar '557 is formed by applying to a substrate a composition containing two or more powders, provided that the powders of non-conductive materials have dielectric constants that differ from each other by a factor of at least 0.1. After the composition of Millar '557 is applied to the substrate, stratified layers of different powders form due to the different dielectric constants (Millar '557 at column 3, lines 1-11 and 42-45).

However, Millar '557 fails to suggest a single layered coating according to the present invention. In particular, Millar '557 fails to suggest a single layer containing two or more powder coatings, wherein the difference in the triboelectric charge of said two or more powder coatings is 5.0 $\mu\text{C/g}$ or less. Furthermore, Millar '557 fails to suggest a single layered coating containing two or more powder coatings wherein the color of each powder coating is different. Millar '557 also fails to suggest a coating film having a homogeneous hue. Appellants submit that it is not at all surprising that Millar '557 fails to suggest the above noted aspects of the present invention. Specifically, Millar '557 is interested in obtaining stratified layers containing different powders, not a single layer containing two or more powder coatings

according to the present invention.

As explained above, Appellants disagree with the Examiner's interpretation of the passage at column 4, lines 11-15 of Millar '557. Specifically, Appellants submit that when this passage is taken in its full context, it is evident that Millar '557 is suggesting a multi-layered structure containing a single layer, wherein the single layer is composed of a single powder, the single powder itself comprising two or more materials. This is drastically different from the present invention which utilizes two or more powder coatings in the same layer. Thus, Millar '557 fails to render the present invention obvious.

However, Appellants further submit that even if the Examiner's interpretation of Millar '557 is hypothetically correct, Millar '557 still fails to suggest the other limitations of the present invention. Specifically, the colors of the two or more powder coatings of the present invention are different and the coating film which is formed has a homogeneous hue. Millar '557 provides no suggestion of these limitations. In fact, Millar '557 fails to provide even a single Example, wherein a single layer contains two or more powders, much less an Example containing two or more powders in a single layer, wherein the color of each powder is different. Accordingly, Millar '557 fails to render the present invention obvious.

Appellants remind the Examiner that it is impermissible within the framework of section 103 to pick and choose from any

one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. In re Wesslau, 147 U.S.P.Q. 391 (CCPA 1965). Appellants submit that the Examiner has read one single passage from Millar '557 out of context. Furthermore, the Examiner has ignored other teachings of Millar '557 in favor of the passage referred to above. Specifically, with the exception of the passage at issue, Millar '557 always discloses multi-layered structures containing a single powder in each individual layer. Accordingly, the Examiner has picked and chose specific elements of Millar '557 while ignoring others which is not proper in constructing a rejection under 35 USC § 103(a). Appellants submit that this rejection has only been made possible with the advantage of hindsight and is thus improper.

GROUP II - CLAIM 37

Appellants respectfully submit that independent claim 37 is patentable over the prior art as cited above under Issue 2 for the following reasons:

In a manner similar to claims 22 and 26, claim 37 recites a powder coating containing two or more powder coatings, which when applied to a substrate forms a single layer. Like claims 22 and 26, claim 37 requires that each of these powder coatings are of different colors, have a difference in triboelectric charge of 5.0

$\mu\text{C/g}$ or less, the particles of the powders are not agglomerated and that the powder coatings form a coating film having a visually homogeneous hue. As established above, Millar '557 fails to suggest any of these limitations.

However, claim 37 differs from claims 22 and 26 in that claim 37 additionally requires that each of said two or more powder coatings contain a resin and at least one colorant. These are additional limitations which are also not suggested by Millar '557. Accordingly, claim 37 is not obvious over Millar '557 for the same reasons as discussed above with respect to claims 22 and 26 and for the reasons recited herein.

GROUP III - CLAIMS 2 AND 27

Claims 2 and 27, which are dependent upon claims 22 and 26, respectively, additionally require that the difference in true specific gravity of each of the two or more powder coatings is 0.15 g/cc or less. In addition to failing to suggest the limitations of independent claims 22 and 26, Millar '557 additionally fails to suggest the limitations of claims 2 and 27. Accordingly, claims 2 and 27 are not obvious over Millar '557.

GROUP IV - CLAIMS 3 and 28

Claims 3 and 28, which are dependent upon claims 22 and 26, respectively, additionally require that the difference in apparent densities of each of the two or more powder coatings is 0.020 g/cc

or less. Appellants submit that in addition to failing to suggest the limitations of independent claims 22 and 26, Millar '557 also fails to suggest the limitations of claims 3 and 28. Accordingly, claims 3 and 28 are not obvious over Millar '557.

GROUP V - CLAIMS 4 AND 29

Claims 4 and 29, which are dependent upon claims 22 and 26, respectively, additionally require that the difference in softening points of said two or more powder coatings is 5.0 °C or less. Appellants submit that in addition to failing to suggest the limitations of independent claims 22 and 26, Millar '557 also fails to suggest the limitations of claims 4 and 29. Accordingly, claims 4 and 29 are not obvious over Millar '557.

GROUP VI - CLAIMS 5 AND 30

Claims 5 and 30, which are dependent upon claims 22 and 26, respectively, additionally require that the difference between the dielectric constants of said two or more powder coatings is 0.20 or less. Appellants submit that in addition to failing to suggest the limitations of independent claims 22 and 26, Millar '557 also fails to suggest the limitations of claims 5 and 30. Accordingly, claims 5 and 30 are not obvious over Millar '557.

GROUP VII - CLAIMS 6 AND 31

Claims 6 and 31, which are dependent upon claims 22 and 26,

respectively, additionally require that each of the ratios of electric resistance of each of said two or more color powder coatings is from 0.1 to 10. Appellants submit that in addition to failing to suggest the limitations of independent claims 22 and 26, Millar '557 also fails to suggest the limitations of claims 6 and 31. Accordingly, claims 6 and 31 are not obvious over Millar '557.

GROUP VIII - CLAIMS 23 AND 34

Claims 23 and 34, which are dependent upon claims 22 and 26, respectively, additionally require that the average particle size of the powder coatings is 1 to 50 μ m. Millar '557 fails to suggest this limitation. Granted, Millar '557 discloses average particle sizes of powders, however, the powders according to Millar '557 are contained in separate layers and not within the same layer as in the present invention. Accordingly, Millar '557 fails to suggest utilizing these particular average particle sizes in combination with a single layer containing two or more powder coatings. Thus, claims 23 and 34 are not obvious over Millar '557.

GROUP IX - CLAIMS 24 AND 35

Claims 24 and 35, which are dependent upon claims 22 and 26, respectively, additionally require that the average particle size of the powder coatings exceeds 10 μ m. Millar '557 fails to suggest

this limitation. Granted, Millar '557 discloses average particle sizes of powders, however, the powders according to Millar '557 are contained in separate layers and not within the same layer as in the present invention. Accordingly, Millar '557 fails to suggest utilizing these particular average particle sizes in combination with a single layer containing two or more powder coatings. Thus, claims 24 and 35 are not obvious over Millar '557.

GROUP X - CLAIMS 7 and 33

Claims 7 and 33, which are dependent upon claims 22 and 23, respectively, additionally require that at least one powder coating is a white powder coating containing a white pigment, and the remaining powder coatings do not contain a white pigment. Millar '557 fails to suggest this limitation.. Accordingly, Millar '557 fails to render obvious the subject matter encompassed by claims 7 and 33.

GROUP XI - CLAIM 32

Claim 32, which depends upon claims 26-31, additionally requires that a powder coating composition which comprises two or more powder coating compositions selected from any one of claims 26-31. This is a limitation not suggested by Millar '557. However, it is not surprising that Millar '557 fails to suggest this limitation because Millar '557 fails to individually suggest

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the limitations of claims 26-31. Therefore, if Millar '557 fails to individually suggest these limitation, Millar '557 cannot suggest combinations of these limitations. Accordingly, Millar '557 fails to render obvious the subject matter encompassed by claim 32.

Conclusion

For the foregoing reasons, the Honorable Board of Appeals is requested to reverse the Examiner's rejections of the claims.

The required Appeal Brief fee in the amount of \$ 300.00 is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By:  #32 868


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(9) APPENDIX - CLAIMS APPEALED

2. The combination of powder coatings according to claim 22, wherein each of differences in true specific gravities of said two or more powder coatings is 0.15 g/cc or less.

3. The combination of powder coatings according to claim 22, wherein each of differences in apparent densities of said two or more powder coatings is 0.020 g/cc or less.

4. The combination of powder coatings according to claim 22, wherein each of differences in softening points of said two or more powder coatings is 5.0°C or less, the softening points being measured using a capillary rheometer.

5. The combination of powder coatings according to claim 22, wherein each of differences in dielectric constants of said two or more powder coatings is 0.20 or less.

6. The combination of powder coatings according to claim 22, wherein each of ratios of the electric resistance of said two or more powder coatings is from 0.1 to 10.

7. The combination of powder coatings according to claim 22, wherein at least one powder coating is a white powder coating

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containing a white pigment, and the remaining powder coatings comprise no white pigments.

22. A combination of two or more powder coatings for forming a coating film having a visually homogeneous hue, comprising two or more color powder coatings wherein the color of each powder coating is different, wherein a difference in triboelectric charge of said two or more powder coatings is 5.0 $\mu\text{C/g}$ or less; and wherein particles of each powder coating are not agglomerated.

23. The combination of powder coatings according to claim 22, wherein the average particle size of the powder coating is from 1 to 50 μm .

24. The combination of powder coatings according to claim 22, wherein the average particle size of the powder coating exceeds 10 μm .

25. The combination of powder coatings according to claim 22, wherein said combination is prepared by mixing two or more powder coatings such that the difference in triboelectric charge of said two or more powder coatings is 5.0 $\mu\text{C/g}$ or less.

26. A powder coating composition capable of forming a

coating film having a visually homogenous hue which comprises two or more color powder coatings wherein the color of each powder coating is different, a difference in triboelectric charge of said two or more powder coatings is 5.0 $\mu\text{C/g}$ or less; and wherein particles of each powder coating is not agglomerated.

27. The composition according to claim 26, wherein a difference in true specific gravities of said two or more color powder coatings is 0.15 g/cc or less.

28. The composition according to claim 26, wherein a difference in apparent densities of said two or more color powder coatings is 0.020 g/cc or less.

29. The composition according to claim 26, wherein a difference in softening points of said two or more color powder coatings is 5.0° C or less, the softening points being measured using a capillary rheometer.

30. The composition according to claim 26, wherein a difference in dielectric constants of said two or more color powder coatings is 0.20 or less.

31. The composition according to claim 26, wherein each of ratios of electric resistance of said two or more color powder

coatings if from 0.1 to 10.

32. A coating composition comprising two or more powder coating compositions selected from any one of claims 26-31.

33. The coating composition according to claim 23, wherein one powder coating is a white powder coating containing a white pigment and the other powder coatings contain no white pigment.

34. The combination of powder coatings according to claim 26, wherein the average particle size of the powder coating is from 1 to 50 μm .

35. The combination of powder coatings according to claim 26, wherein the average particle size of the powder coating exceeds 10 μm .

37. A powder coating composition, comprising two or more color powder coatings, each of said two or more powder coatings comprising:

a resin; and

at least one colorant, wherein

(1) each of said two or more color powder coatings has a different color,

(2) a difference in triboelectric charge of said two or more

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color powder coatings is 5.0 $\mu\text{C/g}$ or less,

(3) the particles of each color powder coating are not agglomerated, and

(4) said powder coating composition forms a coating film having a visually homogeneous hue.